



July 25, 2002

Mr. Eddie L. Martin
Assistant City Attorney
City of Denton
215 East McKinney
Denton, Texas 76201

OR2002-4098

Dear Mr. Martin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166210.

The City of Denton (the "city") received a written request for the following categories of information:

1. Any and all logs, registers, or other information serving the purpose of a log or register showing vehicles impounded by the City of Denton Police Department on October 3, 2001.
2. Any and all information relating to the seizure, storage, operation, and release of a white 1994 Chevrolet extended cab pickup truck . . . registered to [a named individual].
3. Any and all information relating to the seizure, storage, inspection, release, transfer to Denton County, or other disposition or use of any and all personal property, specifically including the keys to the vehicle described in #2, belonging to [a named individual], associated with his arrest by the city of Denton Police Department on October 3, 2001.
4. Pursuant to 522.022(a)(14) [sic], pages from administrative staff manuals and instructions to staff that affect a member of the public pertaining to the seizure of vehicles, use of seized vehicles, storage of seized vehicles, and release of seized vehicles.

You state that the city will release to the requestor some of the information responsive to items 2 and 3, as well as all of the information responsive to item 4. Additionally, you state that the city will release the records responsive to item 1 except for certain information you seek to withhold pursuant to section 552.130(a)(2) of the Government Code. Finally, you contend that the remaining submitted information is either not responsive to items 2 and 3 and therefore need not be released or is excepted from required public disclosure pursuant to section 552.108(a)(1) of the Government Code. We have also received and considered comments from the requestor. *See Gov't Code § 552.304.*

Although you also contend that portions of Exhibit B are excepted from required public disclosure pursuant to the informer's privilege, we note that you did not raise this argument within the initial ten business days following the city's receipt of the current records request. Normally, a governmental body must raise an otherwise applicable exception to required public disclosure within the ten business days following the governmental body's receipt of an open records request. *See Gov't Code § 552.301(a).* This office will not consider an exception raised after the initial ten days unless there exists a compelling reason for doing so. Open Records Decision No. 515 at 6 (1988). The informer's privilege is designed to protect the government's interests, and thus, the existence of this privilege by itself does not demonstrate a compelling interest to withhold the information. Open Records Decision No. 549 (1990) (informer's privilege waivable). Accordingly, we do not address the applicability of the informer's privilege in this instance.

We first address your contention that the records you submitted to this office as Exhibit B are not responsive to items 2 and 3 listed above. Exhibit B consists of records directly pertaining to the arrests of individuals for various drug charges. The arrests resulted in the seizure of the referenced pickup truck and other personal possessions. We therefore cannot conclude that the contents of Exhibit B do not "relate" to the subsequent seizures. Accordingly, we conclude that Exhibit B is responsive to the request and may be withheld only to the extent the information comes within an exception to required public disclosure.

However, before we address the applicability of the exceptions you raised, we must first address a procedural issue. The requestor contends that the city did not timely comply with the requirement found in section 552.301(d) of the Government Code, which provides as follows:

(d) A governmental body that requests an attorney general decision under Subsection (a) must provide to the requestor within a reasonable time *but not later than the 10th business day after the date of receiving the requestor's written request:*

(1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general about whether the information is within an exception to public disclosure; and

(2) a copy of the governmental body's written communication to the attorney general asking for the decision or, if the governmental body's written communication to the attorney general discloses the requested information, a redacted copy of that written communication. [Emphasis added.]

Failure to comply with the requirements of section 552.301(d) results in the legal presumption that the requested information is public and must be released to the requestor unless there exist compelling reasons for withholding the information. Gov't Code § 552.302.

The city received the current records request on May 8, 2002. Consequently, the tenth business day following receipt of the request was May 22, 2002, the day on which you submitted your request for an open records ruling. The requestor has submitted to this office a copy of the city's envelope addressed to him that contained the information required under section 552.301(d). The envelope bears the U.S. Postal Service postmark date of May 24, 2002, two days beyond the statutory deadline. Because this office felt that it needed additional information to determine whether the city timely complied with the requirements of section 552.301(d), we requested by correspondence sent to you by facsimile on July 9, 2002 that you confirm the date on which the city mailed the information to the requestor. *See* Gov't Code § 552.303(c). Our correspondence to the city informed you that the city had seven calendar days to submit to this office the additional information requested. Gov't Code § 552.303(d).

You responded to our correspondence in a timely manner. *See* Gov't Code § 552.303(e) (failure to timely provide this office the information requested under section 552.303 results in the presumption that the information responsive to the request is public information and must be released unless there exists a compelling reason to withhold the information). In response to our request, you submitted an affidavit in which a city employee attests in pertinent part:

The letter [to the requestor] was prepared for mailing and then put into the city's mail system and was picked up on May 22, 2002.

The letter was then outside of our control and I have no knowledge as to why it may have been postmarked on May 24, 2002.

This affidavit does not establish that the city deposited the requestor's information with the United States mail in a timely fashion as required by section 552.301(d). *See* Gov't Code § 552.308 (stating that information is timely if either it bears post office cancellation mark indicating time within prescribed period or the governmental body "furnishes satisfactory proof that it was deposited in the mail within that period"). We therefore conclude pursuant to section 552.302 that the submitted information is presumed to be public and must be released unless there exist compelling reasons for withholding the information.

In Open Records Decision No. 586 (1991), this office concluded that the need of a law enforcement agency, other than the one that received the written request, to withhold information from disclosure may be a compelling reason to overcome the presumption that the information is public. You contend that the Denton County District Attorney (the "district attorney") has a compelling section 552.108 interest in having the requested documents withheld. Therefore, we will address your section 552.108 claim.

Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." In a letter submitted to this office, the district attorney states that the release of the documents relating to the arrests would interfere with the prosecution of pending criminal litigation. Based upon this representation, we conclude that the release of most of the information contained in Exhibit B would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Section 552.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Because you have raised no other exception to disclosure, the city must release these types of information in accordance with *Houston Chronicle*. Additionally, the city may not now withhold any information it previously released to the requestor. See Gov't Code § 552.007 (prohibiting selective disclosure of information).

We also note that Exhibit B contains an executed search warrant and the accompanying affidavit. It is well established that information specifically made public by law outside the Texas Public Information Act (the "Act") may not be withheld pursuant to any of the Act's exceptions to required public disclosure. See, e.g., Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Article 18.01(b) of the Code of Criminal Procedure provides:

No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. *The affidavit is public information if executed* [Emphasis added.]

See also *Houston Chronicle Publishing Co. v. Woods*, 949 S.W.2d 492 (Tex. App.--Beaumont 1997, orig. proceeding). Accordingly, the city must release the search warrant affidavit to the requestor.

The fact that information is deemed confidential by law also constitutes a compelling reason for withholding information. *See* Open Records Decision No. 150 (1977). In this regard, we note that section 552.130(a)(2) of the Government Code requires the withholding of information relating to "a motor vehicle title or registration issued by an agency of this state." Consequently, the city must withhold the license plate numbers contained in Exhibit C pursuant to section 552.130(a)(2), but only to the extent those number were issued by "an agency of this state." Otherwise, the license plate numbers must be released.

In summary, the city may withhold pursuant to section 552.108(a)(1) the information contained in Exhibit B except for "basic information" and the search warrant affidavit, which must be released. The city must also withhold pursuant to section 552.130(a)(2) all Texas license plate numbers contained in Exhibit C.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cindy Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CMN/RWP/sdk

Ref: ID# 166210

Enc: Submitted documents

c: Dr. Paul L. Schlieve
1828 Broadway Street
Denton, Texas 76201-2561
(w/o enclosures)